IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929

Bail Appl..No. 5658 of 2007()

CRIME NO. 804/07 OF KARUNAGAPPALLY POLICE STATION

PETITIONER/ACCUSED

BALAGOPAL,@ AMMANANPILLAI,
S/O KRISHNA PILLAI, GOKULAM,
MUZHANGODI, THODIYOOR P.O.,
KARUNAGAPPALLY.

BY ADV. SRI.T.GOPALAKRISHNAN

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
SUB INSPECTOR OF POLICE, KARUNAGAPPALLY, THROUGH
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 20/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 5658 of 2007

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Dated this the 20th day of September, 2007

O R D E R

Second application for anticipatory bail. The earlier application for anticipatory bail was dismissed by this Court as per order dt. 11.9.2007 in B.A.No. 5460 of 2007. The learned counsel for the petitioner re-iterates the prayer for anticipatory bail in this petition on the plea that certain important circumstances were omitted to be brought to the notice of the court when the earlier application was disposed of. The learned counsel for the petitioner submits that the petitioner had omitted to bring to the notice of the court certain vitally relevant portions of the seizure mahazar. I do note that this Court had also not considered the mahazar in detail when the matter came up for hearing on the last occasion.

2. The crux of the allegations against the petitioner is that he was found to carry 6 x 2.25 litres of IMFL in his motor cycle. There is no specific allegation that the petitioner was carrying this quantity of contraband liquor for sale. Except that he was found in possession of such quantity of IMFL, there is no other allegation whatsoever

raised against him. Of course, there is the further circumstance that the petitioner, on seeing the police, took to his heels and did not stop to explain his possession.

3. A crucial aspect, which was omitted to be noted when the matter came up for hearing on the last occasion, is the statement in the mahazar itself that there was a sticker on the sealed bottle. It is the common case that the liquor in question is IMFL. There is no specific allegation that it is spurious and is not vended through the Beverages Corporation. There is no specific allegation that the petitioner had committed any other offence in respect of the liquor seized.

4. It is trite after the decisions in **Sabu** v. **State of Kerala** (2003 (2) KLT 173) and **Surendran** v. **Excise Inspector** (2004 (1) KLT 404) that the mere possession of liquor which can otherwise be possessed ,in excess of the quantity prescribed, cannot attract the offence punishable under Section 55 of the Kerala Abkari Act unless it be a case of possession for sale under Section 55(1) of the Act. Of course, the petitioner did allegedly run away on seeing the police. It may be a sad commentary on the system. But the reality cannot be ignored that many persons in this country may prefer to run away from the police and courts. Merely because he had run away, an inference that an offence under Section 55 of the Act has been

committed cannot certainly be drawn. Even otherwise the bailable offence punishable under Section 63 will be revealed if the excess quantity of genuine liquor is possessed by the accused. Running away can be explained in that manner.

5. The learned Prosecutor submits that in the seizure mahazar there is no specific statement that the sticker was of the Beverages Corporation. I am dealing with an application for bail by an accused person. That a sticker was there is borne out by the seizure mahazar. There is no statement that there is no sticker of the Beverages Corporation. I am of the opinion that the discretion under Section 437 Cr.P.C. and even the one under Section 41A of the Kerala Abkari Act must and can certainly be invoked in favour of the petitioner, who admittedly has no criminal antecedents whatsoever. I am, in these circumstances, satisfied that this second application for anticipatory bail deserves to be allowed. Appropriate conditions can of course be imposed.

6. In the result:

(1) This application is allowed.

(2) The following directions are issued under Section 438 Cr.P.C.

(a) The petitioner shall surrender before the learned Magistrate on 27.9.2007 at 11 a.m. The learned Magistrate shall release the petitioner on

regular bail on condition that he executes a bond for Rs.25,000/- (Rupees twenty five thousand only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(b) The petitioner shall make himself available for interrogation before the Investigating Officer between 10 a.m. and 3 p.m. on 28.9.2007 and 29.9.2007 and thereafter on all Mondays and Fridays between 10 a.m. and 12 noon for a period of two months and subsequently as and when directed by the Investigating Officer in writing to do so.

(c) If the petitioner does not appear before the learned Magistrate as directed in clause (1) above, these directions shall lapse on 27.9.07 and the police shall be at liberty thereafter to arrest the petitioner and deal with him in accordance with law.

(d) If the petitioner were arrested prior to his surrender on 27.9.2007 as directed in clause (1) above, he shall be released on bail on his executing a bond for Rs.25,000/- without any surety undertaking to appear before the learned Magistrate on 27.9.2007.

(R. BASANT)
Judge

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